Office Supreme Court, U.S.
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ALEXANDER L. STEVAS,
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84-1817

NO.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

JUDE THIBAULT,

Plaintiff—Appellant,

VS.

CARL H. WEISS, A. DiSANTO,
G. GRAGIN, CHARLES E. RODDY,
and INTERNAL REVENUE SERVICE,
— and —
UNITED STATES OF AMERICA,

Appellees.

ON DIRECT APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT PURSUANT TO ART. III, U.S. CONSTITUTION, AND, TITLE 28, U.S.C., 1252

JURISDICTIONAL STATEMENT

JUDE THIBAULT
APPELLANT
P.O. BOX 133
STEVENS, PA 17578

MAY 20, 1985

63pp

QUESTIONS PRESENTED

(1) Is the Constitution of the United States of America still in full force and effect as the Supreme Law of the Land?

(2) Did the district court invalidate any provisions of the Constitution of the United States of America and/or the Constitution of the State of Connecticut?

(3) Is the Act of Congress known as the Bill of Rights [first 10 Articles of Amendment to the U.S. Constitution] still in full force and effect?

(4) Did the district court invalidate any provisions of the first 10 Articles of Amendment to the U.S. Constitution known as the Bill of Rights ?

(5) Is there any validity to the Act of Congress known as the United States Code?

(6) Did the district court invalidate any provision of any Act of Congress con-

tained in the United States Code?

(7) In light of Reorganization Plan No. 1 of 1952, which reorganized the BUREAU of Internal Revenue, and the correspondence from Internal Revenue Service regarding Treasury Memo, is the Internal Revenue Service a lawful part of the United States Government?

(8) Did the district court invalidate the Act of Congress contained in Title 1, U.S. Code, §204?

(9) Did the district court err in permitting the United States of America to become a party to a civil action between private parties?

(10) Did the district court invalidate the Acts of Congress contained in Title 28, U.S. Code, §§455, and 2072?

(11) Did the district court usurp Legislative Power by unlawfully "legislating" Title 26, U.S.C., into LAW in

the instant proceedings?

(12) Did the district court fail and refuse to grant relief to the appellant, since the appellees did not oppose said relief?

(13) Did the Executive and the Judicial departments conspire to deprive the appellant of Life, Liberty, and Property, under color of law?

(14) Did the actions of the Executive and Judiciary place the integrity of the federal court system in jeopardy?

(15) Does this Court have the courage to squarely address the issues raised in this appeal; issues which have never been addressed or settled by this Court, in spite of the "lateness of the hour"?

(16) Did the district court apply and/or "legislate" ex post facto in this case?

LIST OF ALL PARTIES

The named appellees is clear and unmistakeable. However, the United States of America has undertaken to make itself a party to this lawsuit. The appellant did not make the United States of America a party, yet the Executive and Judicial departments have done so, in spite of the plaintiff/appellant's objections. What, or who, acted behind the scene to prompt the agents of the United States of America to enter this case, are unknown to the plaintiff/appellant. Therefore, the following list can only be construed as a partial list of the parties to this appeal.

Named defendant/appellees:

CARL H. WEISS
A. DiSANTO
G. CRAGIN
CHARLES E.RODDY
INTERNAL REVENUE SERVICE

For the UNITED STATES OF AMERICA:

GLEN L. ARCHER, JR., Asst. Atty. Gen.
MICHAEL L. PAUP, Attorney, DOJ
WILLIAM S. ESTABROOK, Attorney, DOJ
THOMAS A. GICK, Attorney, DOJ
EDWARD S.G. DENNIS, JR., U.S. Attorney
EDWARD N. CAHN, U.S.D.Judge

Circuit Court Judges: ALDISERT, SEITZ, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGENBOTHAM, SLOVITER, BECKER, and VAN DUSEN

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1984

JUDE THIBAULT,

Plaintiff-Appellant,

vs.

CARL H. WEISS, A. DiSANTO,
G. GRAGIN, CHARLES E. RODDY,
and INTERNAL REVENUE SERVICE,

Respondents-Appellees.

ON DIRECT APPEAL FROM THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT
PURSUANT TO ART. III, U.S. CONSTITUTION,
AND, TITLE 28, U.S.C., §1252

OPINIONS BELOW

The circuit court issued a memorandum opinion and judgment on March 27, 1985 in docket number 84-1658, which is the subject of this appeal (A-1, A-2).

The circuit court denied what it labeled "Sur Petition For Rehearing" on April 25, 1985, which is also the subject of this appeal (A-3, A-4).

JURISDICTIONAL GROUNDS IN THIS COURT

The agents of the Executive Department of the appellee [U.S.A.] have conferred appellate jurisdiction on this Court by interposing the United States of America into a civil action AT LAW brought by the plaintiff-appellant to enforce, redress, and protect plaintiff-appellant's PRIVATE rights.

The named defendants-appellees entered no objections to the relief sought by the plaintiff-appellant in the lower court.

The United States of America made itself a party to the AT LAW lawsuit, and is a party to this appeal.

U.S.D. Judge EDWARD N. CAHN, who is an agent of the appellee [U.S.A.], permitted the Executive to make the United States of America a party to this civil action AT LAW, over the objections of the appellant. The United States of America is a de facto

party in this appeal.

The jurisdiction of this Court is invoked pursuant to Art. III, Sec. 2 of the Constitution of the United States of America, which grants appellate jurisdiction to this Court in all controversies in which the United States shall be a party.

The Executive has conspired with the Judiciary to unlawfully "legislate" Title 26, U.S. Code into law, in clear violation of the will and intent of the Congress of the United States of America, and to allow that phony "law" to be used as an excuse for making the United States of America a party to this civil action AT LAW.

The Executive has conspired with the Judiciary in an attempt to subvert, and invalidate, the Organic Law Of The United States Of America and numerous Acts of Congress, and to deny unalienable and common law rights to the appellant.

That Executive/Judiciary conspiracy has created an appearance that "federal taxes" are involved in this "case" when, in fact, NO FEDERAL TAXES ARE INVOLVED.

There is also statutory authority for this direct appeal. That authority is contained in Title 28, U.S.C. §1252. The statutory authority is more limiting than its Constitutional authority. In citing said statutory authority, the appellant does not waive, intend to waive, or accept any statutory limits on the appellate jurisdiction of this Court which would limit the appellant's rights in any way. The appellant claims and demands the broadest Constitutional application of the appellate jurisdiction of the Supreme Court, as set forth and mandated in the Constitution of the United States of America.

With respect to the statutory authority

for this direct appeal, 28 U.S.C. §1252 provides for direct appeal from any interlocutory or final judgment, decree, or order of any court of the United States, holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party.

Moreover, the "rulings", "opinions", "determinations", "judgments", "appeals", and/or "decisions" have invalidated numerous Acts of Congress; another requirement for the invocation of Title 28, U.S.C., §1252.

This appeal conforms to the requirements of Title 28, U.S.C., §1252.

CONSTITUTIONAL PROVISIONS INVOLVED

Appellant factually states that Title

26 U.S. Code has never been enacted into law and that Title 26 U.S. Code is unconstitutional because it violates Art. I Sec. 1 U.S. Constitution.

***

Art. I Sec. 8 Cl. 1 U.S. Const. mandates that:

> The Congress shall have the Power To lay and collect Taxes, Duties, imposts and Excises,

The Power to Collect Taxes rests exclusively with the Congress. The I.R.S. makes no pretense at being a part of the Congress. "We The People" never granted Congress the power to delegate any of its duty or responsibility to Collect Taxes to an unlawful and outlaw "agency" such as the I.R.S.

***

Art. I Sec. 9 Cl. 4 U.S. Const.

> No capitation, or other direct, Tax shall be laid, unless in Proportion

> to the Census or Enumeration herein before directed to be taken.

The 16th Amend. created no new form of tax, yet said 16th Amend. is the alleged "authority" under which the I.R.S. operates to unlawfully collect direct taxes. The 16th Amendment has never been lawfully ratified, and appellant has copies of certified documents to prove this.

***

AMENDMENT I

> Congress shall make no law... abridging the freedom of speech, or of the press;...and to petition the Government for a redress of grievances.

Appellant factually states that his freedom of speech and his right to petition for redress of grievances has been denied.

***

AMENDMENT_IV

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated,...

Appellant factually states that his Fourth Amendment rights were violated in order to begin the fraudulent proceedings herein appealed.

***

AMENDMENT_V

> No person shall be...deprived of life, liberty, or property, without due process of law;

Appellant factually states that ALL proceedings held in the lower courts were in Want of Jurisdiction, a total abuse and denial of due process of law.

***

AMENDMENTS_IX_AND_X

Appellant factually states that no

power has been granted to the federal government to proceed against the appellant herein. In addition, the appellant reasserts his rights as the master of his government, in his sovereign capacity as a sovereign citizen of the State of Pennsylvania, and of the United States of America.

STATEMENT OF THE CASE

This case was instituted as a civil action AT LAW, in the United States District Court for the Eastern District of Pennsylvania, for the purpose of enforcing, redressing, and protecting the plaintiff-appellant's PRIVATE RIGHTS. The district court case is entitled Thibault v. Weiss, 84-4534. The circuit court case is Thibault v. Weiss, 84-1658, which is on appeal herein.

The original Complaint At Law reads as follows:

"The Plaintiff, JUDE THIBAULT, for his complaint alleges as follows:

1. The purpose of this action AT LAW is to enjoin the defendants from infringing on the plaintiff's privacy, property, and other rights. Said rights are mandated and guaranteed by the Constitution of the United States of America, and especially by Articles of Amendment I, IV, V, IX and X thereto.

2. This is a civil action AT LAW, and not a suit in equity.

3. The United States of America is not made a party to this action because:
A. The plaintiff is reasonably certain that none of the defendants are lawfully a part of the United States government, or lawful employees thereof, and,
B. Even if they were lawfully a part of the United States government, or lawful employees thereof, the acts and actions herein complained of are in excess of any power or authority granted to the Executive Department, and are in fact specifically prohibited acts and actions under Article I, Section 8, Clause 1 of the Constitution of the United States of America and Articles of Amendment I, IV, V, IX and X thereto.

JURISDICTION

4. The jurisdiction of this Court is invoked pursuant to the Constitution of the United States of America and Articles of Amendment I, IV, V, IX and X thereto.

VENUE

5. This Court is an Article III court established for the District of Pennsylvania by the Congress of the United States, and all acts and actions herein complained of occurred in the District of Pennsylvania.

STATEMENT OF FACTS

6. The plaintiff received papers from the defendants bearing a stamped date of 30

Sep 1983 in which an attempt was made to extort money (property) from the plaintiff for alleged "taxes due" for the calendar years 1976 and 1977. The plaintiff was not even in the State of Pennsylvania during those years. (Exhibits #1 to #9)

7. The plaintiff responded to the September 30, 1983 papers by his letters dated November 22, 1983, and December 15, 1983. (Exhibits #10 to #12)

8. The plaintiff received a letter date stamped 29 Dec 1983 bearing the signature of defendant CARL H. WEISS and suggesting that the plaintiff contact defendant A. DiSANTO, which letter purports to be in answer to plaintiff's letter of November 22, 1983. (Exhibits # 13 to #18)

9. The plaintiff responded by letter dated January 24, 1984 in which the plaintiff pointed out that his discovery questions were unanswered. (Exhibit #19)

10. The plaintiff also inquired of Congressman BOB WALKER by letter dated January 24, 1984, into the legitimacy of the Internal Revenue Service, and whether it was in fact a lawful part of the United States Government (Exhibit #20). To date, Congressman BOB WALKER has failed to respond. He presumably is unable to respond without exposing the fraudulent nature of the I.R.S.

11. The plaintiff received no further response from the defendants except for a form letter bearing the stamped date of June 22, 1984 and the stamped signature of defendant CHARLES E. RODDY, in which further attempts were made to extort money (property) from the plaintiff (Exhibits #21 to #25). There is no doubt that the defendants fully intend to steal property and money from the plaintiff, and will continue their attempts to do so unless enjoined by this Court.

12. Exhibit #1 and #13 are clear evidence of an attempt by the defendants to coerce and entrap the plaintiff into creating a jurisdiction over him by forcing him into "Tax Court". This attempt is even more blatant and flagrant considering the fact that IF there was such a thing as the United States Internal Revenue Service, which there is not, the statute of limitations would be a bar to such proceedings.

COUNT 1.

WHOSE INTERNAL REVENUE SERVICE?

13. There is nothing in the papers received from the defendants (Exhibits #1 to #9; #21 to #25) that would indicate that the Internal Revenue Service referred to is in any way a part of the United States Government. In his questions #1, 2, 3, as contained in his letter of November 22, 1983 (Exhibit #10), the plaintiff specifically asked the defendants if the I.R.S. is a part of the U.S. Government. The defendants have failed to respond to these questions. This is compelling evidence that the defendants are aware that the I.R.S. is not a part of the U.S. Government.

14. The plaintiff specifically requested this same information in his letter to Congressman BOB WALKER dated January 24, 1984 (Exhibit #20). The Congressman failed to respond to these questions. This is a confirmation that all government officials are aware that the I.R.S. is not a part of the U.S. Government.

15. From the research already done by the plaintiff; the fact that the defendants failed to respond; and the failure of the representative of the Congress of the United States of America to respond and furnish proof; compels a conclusion that the defendant Internal Revenue Service is not a part of the United States

Government. "Whose Internal Revenue Service?" Nobody seems to know.

COUNT 2.

PLAINTIFF HAD NO DEALINGS WITH THE INTERNAL REVENUE SERVICE

16. Paragraphs 13 through 15 are incorporated by reference with the same force and effect as if fully stated and alleged herein.

17. The defendants admit in their unsigned papers at Exhibits #4, 23, and 24 that the plaintiff did not file any "returns" for the time period involved, evidencing the fact that the plaintiff had no dealings with the defendants in 1976 and 1977.

18. The plaintiff could not have had any dealings with said defendants since he was not even in or near the State of Pennsylvania during the period alleged by the defendants.

19. The plaintiff clearly had no dealings with the defendants, owes no "taxes", and wishes to have no dealings with said defendants, which is the reason that this lawsuit has been instituted.

COUNT 3.

ATTEMPTED EXTORTION

20. Paragraphs 13 through 19 are incorporated by reference with the same force and effect as if fully stated and alleged herein.

21. The defendants are attempting to Lay and Collect a Direct Tax never authorized by either the Constitution of the United States of America or by the Congress, upon the plaintiff, without any lawful authority to do so, which is attempted extortion. This is especially significant in that this attempted extortion offers further evidence to this Court that the Internal Revenue Service is not a part of the United States Government.

22. If the so-called Internal Revenue Service were in any way a part of the United States Government, it would have to be a part of the Legislative Department, as expressly provided in Article I, Section 8, Clause 1 of the Constitution of the United States of America. There is no provision, expressed or implied, whereby the Congress can delegate its duty and responsibility to Lay and Collect Taxes to anyone or any agency. The so-called Internal Revenue Service can lay no claim to being a part of the Legislative Department.

23. The attention of this Court is directed to the fact that the so-called 16th Amendment created no new form of tax, nor did it in any way alter how taxes were to be levied and collected, as evidenced by various challenges to that so-called Amendment settled by the Supreme Court years ago.

24. This attempt to collect unauthorized taxes is really an attempt to extort money (property) from the plaintiff herein, under pretext of law.

WHEREFORE, the plaintiff, JUDE THIBAULT, respectfully claims:

a. This this Court must declare that the defendants have conspired to deprive the plaintiff of his guaranteed, protected and unalienable rights, under color of law, and in violation of the prohibitions contained in the Constitution of the United States of America and Articles of Amendment I, IV, V, VII, IX and X thereto; and that injunctive relief is appropriate and necessary to prevent further attempts by the defendants to violate the plaintiff's rights.

b. That this Court declare that the defendants singularly and in concert with others, have engaged in conduct which interferes with the lawful functions of the

government of the United States of America, and that injunctive relief is appropriate to prevent recurrance of such unlawful conduct, under this Court's AT LAW powers.

c. That this Court enter a preliminary and permanent injunction enjoining and restraining the defendants and their officers, agents, servants, employees, and attorneys and all those in active concert or participation with them and each of them from:

1. Issuing and/or enforcing summonses, conducting investigations (civil and criminal), collecting "taxes", seizing property belonging to the plaintiff on behalf of the United States of America, under color of law;

2.Harrassing, annoying or bothering the plaintiff in any way;

3.Creating legal fictions, and usurping the lawful functions of the Legislative, Executive and Judicial Departments of the federal government under color of law;

4. Advertising, marketing, selling, or otherwise distributing any documents or other material which advises or intimidates American citizens into "filing tax returns", and/or paying "income taxes";

5. Advertising, marketing, selling, or otherwise distributing any documents or other materials which would tend to give the false impression that the "Internal Revenue Service" is a part of the federal government;

6. Threatening to, or actually instituting any lawsuits or other court actions against the plaintiff and others who obey the Law of the Land, and who refuse to be a party to the lawlessness of the defendants, et al;

d. That this Court furnish the plaintiff with such other AT LAW relief as it is empowered BY LAW to offer.

Dated: September 17, 1984 [filed 9/21/84]."

On October 3, 1984 [filed 10/5/84], and BEFORE any of the respondents had an opportunity to enter an appearance, or in any way answer, controvert or deny the allegations contained in the Complaint At Law, U.S.D. Judge EDWARD N. CAHN unlawfully entered an "order" which read as follows:

"AND NOW, this 3rd day of October, 1984, IT IS ORDERED that the within case is DISMISSED as frivolous.

BY THE COURT:

/s/

Edward N. Cahn, J.."

So much for the "justice" available from the district court. Justice, and redress of grievances is not available from that court.

The plaintiff-appellant for the record did reject the "order" of Judge CAHN on October 11, 1984, as follows:

"PLAINTIFF'S REJECTION OF JUDGE CAHN'S SUMMARY DISMISSAL OF THIS LAWSUIT

The plaintiff herein, JUDE THIBAULT, strongly objects to, and hereby rejects,

the summary dismissal of this lawsuit on October 3, 1984, by U.S.D. JUDGE EDWARD N. CAHN, before service of summonses and before any appearances by the respondents were made.

By issuing said order, Judge CAHN has placed himself in the camp of the respondents, hindered prosecution, obstructed justice, and frustrated the workings of due process.

The plaintiff claims the relief to which he is entitled, including, but not limited to, a fair hearing by a competent impartial judge."

The appellant filed a timely appeal with the circuit court, and timely filed his brief, which reads as follows:

"DISCLAIMER

This is an appeal, in an Civil Action AT LAW, of an order of the lower court entered sua sponte, and before any appearances were made. The normal rules of procedure do not apply to the appellant, and he will obey said rules only where they do not deny him due process and other rights. The attention of this Court is directed to Title 28, U,S.C. §2072 which states, in part, as follows:

> "Such rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as at common law and as declared by the Seventh Amendment To The Constitution."

STATEMENT OF THE CASE

A Complaint At Law was filed in the United States District Court for the Eastern District of Pennsylvania, on

September 21, 1984, which bears the docket number 84-4534 in that court.

On September 21, 1984, LORRAINE P. ARTILES, Deputy Clerk for the Eastern District of Pennsylvania, issued a Summons In A Civil Action, which completed the initial filing of the complaint, pursuant to Rules 3 and 4 of the Federal Rules of Civil Procedure, and which commenced a civil action AT LAW in the lower court.

Before any appearances could be filed by the defendants, and without cause, U.S.D.Judge EDWARD N. CAHN issued an order sua sponte on October 3, 1984, filed and entered October 5, 1984, as follows:

"AND NOW, this 3rd day of October, 1984, IT IS ORDERED that the within case is DISMISSED as frivolous."

(Appendix page A-1)

STATEMENT OF ISSUES

There is nothing in the record to indicate that the plaintiff hired Judge CAHN as his attorney, nor did he give said Judge CAHN power of attorney.

There is nothing in the record to indicate that any of the respondents hired Judge CAHN as their attorney, nor was he given power of attorney by said respondents.

There is nothing in the record to indicate that a jury trial was had in these proceedings.

There is nothing in the record, or in the order, to indicate what motivated or prompted Judge CAHN to issue said order, nor is any law cited whereby said Judge CAHN justified the issuance of said order.

ISSUES PRESENTED

1. Whether Judge CAHN had the power and authority to issue the order herein

appealed?

2. Whether Judge CAHN had the power and authority to deny to the plaintiff his AT LAW remedies?

3. Whether Judge CAHN unlawfully represented either the plaintiff or the respondents in issuing said order?

4. Whether Judge CAHN unlawfully denied the protection of the Constitution of the United States of America to the plaintiff?

5. Whether Judge CAHN unlawfully denied the protection of the Bill of Rights to the plaintiff?

6. Whether Judge CAHN unlawfully acted as an agent for the respondents?

7. Whether Judge CAHN is competent and qualified to sit as a judge in the lower court?

8. Whether Judge CAHN violated the "good behavior" provisions of Article III, Section 1, of the Constitution of the United States?

9. Whether Judge CAHN should be removed from the bench?

10. Whether an AT LAW proceeding can be dismissed or discharged except by the verdict of a trial jury?

ARGUMENT 1

The plaintiff, having instituted a civil action AT LAW, had and has the right to expect the lower court and this Court to fully protect his rights, including his right to redress grievances as set forth in the First Article of Amendment to the Constitution of the United States. No one, including and especially Judge CAHN, has the right to interfere with the plaintiff's assertion of his rights.

ARGUMENT 2

The appellant, had and has the right to expect the lower court and this Court to honor his due process rights, not to

trample upon said rights as Judge CAHN has done. Due process requires that both sides be heard by an impartial jury, with said jury (not Judge CAHN) determining the law and the facts.

CONCLUSION

Judge CAHN unlawfully interfered and stonewalled the efforts of the appellant to seek AT LAW remedies by issuing the "order" herein appealed. In so doing, said Judge CAHN violated the conditions of "good behavior" required of all federal judges by Article III, Section 1, of the Constitution of the United States.

The appellant claims and demands his Constitutional rights to be heard, and that this Court, in the interests of justice, must:

1. Immediately issue a temporary restraining order (TRO) against the respondents and Judge CAHN, in order to protect the plaintiffs rights from additional harm, and,

2.Reverse the order of Judge CAHN dated October 3, 1984, and filed and entered on October 5, 1984, and,

3. Direct the lower court, which unlawfully sandbagged the original summons with said "order", to take whatever action is necessary to promptly secure appearances from the respondents, and,

4. Direct that the lower court promptly bring this matter to trial before a fair and impartial jury, qualified and competent to hear and determine the law as well as the facts, and,

5. Direct that a competent and unbiased judge of the lower court be assigned to the trial of this lawsuit.

Dated: December 18, 1984"

The circuit court permitted the United

States of America to enter this appeal, and granted an extention of time for them to file the "appellees brief". The arguments presented by the United States of America in its brief were answered by the appellant, as follows:

"APPELLANT'S REPLY BRIEF
WITH APPENDIX ATTACHED

DISCLAIMER

This is an appeal in an Civil Action AT LAW, of a sua sponte order of the lower court entered before any appearances were made. The normal rules of procedure do not apply to the appellant, who is compelled to proceed pro se. He will obey said rules only where they do not deny him due process and other rights. The attention of this Court is directed to Title 28, U.S.C.,§2072 which states, in part, as follows:

> "Such rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as at common law and as declared by the Seventh Amendment To The Constitution."

The submission of this Reply Brief may not be construed as accepting the unlawful appearance of the U.S. Department of Justice in this Civil Action At Law. This Civil Action At Law was instituted to redress, enforce and protect the private rights of the appellant. The United States of America does not possess any "private

rights", and therefore has no standing in this Court.

APPELLANT'S REPLY

FACT 1. Before the Department of Justice and the U.S. Attorney can lawfully enter an appearance on behalf of the United States of America, it must first establish the identity of the United States of America, and prove that said United States of America is a party to this action, and that the United States of America has hired them as its attorney. This has not been done. For this reason the appearance of the Department of Justice and the U.S. Attorney must be striken.

FACT 2. The complaint herein clearly states that the United States of America is not a party to this lawsuit. (A-2, attached Appendix)

FACT 3. The complaint herein clearly states that the Internal Revenue Service is not lawfully a part of the United States Government. (A-2, A-6, A-8, attached Appendix)

FACT 4. Lacking clear evidence and proof that the United States of America is a party to this lawsuit, the plaintiff claims and demands that the appearance of the Department of Justice and the United States Attorney be striken from this lawsuit, as being frivolous, and as meddling into affairs that are not of concern to them.

FACT 5. Lacking clear evidence and proof that the Internal Revenue Service is lawfully a part of the United States Government, the plaintiff claims and demands that the appearance of the Department of Justice and the United States Attorney be striken from this lawsuit, as being frivolous, and as meddling into affairs that are not of concern to them.

FACT 6. The "attorneys" for the defendants refer to the appellant as a "taxpayer",

which is a false premise.

> "Taxpayer. Person whose income is subject to taxation."
>
> Black's Law Dictionary, 5th Ed.

THE APPELLANT IS NOT A "TAXPAYER".

FACT 7. The "case law" cited is wholly inappropriate and deliberately misleading in this lawsuit, because in the cases cited, the United States of America was a party. Besides, this is a lawsuit At Law, and as such, deals exclusively in matters of law. The "cases" cited are not law, merely the results of wrongheaded thinking reduced to print. Said "case law" has no standing in this lawsuit. It is specious and frivolous in At Law proceedings.

FACT 8. With respect to the reliance of the defendants on 26 U.S.C., Chapter 61, §§6201, 6212, 6213, 6532, 6672, 6694, 7421. 7422, 7426, and 7429, they are acting upon another false premise. Title 26, U.S.C., which incorporates the Internal Revenue Code of 1939 and the Internal Revenue Code of 1954 as amended, has never been enacted into law by Congress, as set forth in the complaint herein. Here again, the meddling of the Department of Justice and of the United States Attorney becomes evident, because NOTHING CONTAINED IN TITLE 26, U.S. CODE IS THE LAW OF THE UNITED STATES. There is no lawful basis in Title 26 of the United States Code for appearance of the "attorneys" of the United States. (A-36 to A-51, attached Appendix)

FACT 9. It is a fact that Title 26 of the United States Code has NEVER been enacted into law by Congress. (A-36 to A-51, attached Appendix)

FACT 10. With respect to the reliance of the defendants on 28 U.S.C., Sections 1346, 1491 and 2201, this is also frivolous, because there is no applicable law for 28 U.S.C. to be applied to, especially none

contained in Title 26 of the United States Code.

FACT 11. With respect to the reliance of the defendants on 28 U.S.C., Sections 1346, 1491, and 2201, they are acting upon another false premise. Congress, in 1946, proclaimed ALL of the general and permanent laws of the United States contained in the United States Code to be "inconsistent, redundant, archaic and obsolete". Subsequent to that proclamation, Congress did in fact enact Title 28 of the United States Code into law on June 25, 1948 (ch.646, 62 Stat. 869), which temporarily removed the stigma of it being "inconsistent, redundant, archaic and obsolete. (A-36 to A-51, attached Appendix)

FACT 12. The authority for the United States Code was transferred from Title 1 to Title 2, U.S.C., § 285b in 1974 (Pub. L. 93-554, title I, ch. III, § 101, Dec. 27, 1974), effective January 2, 1975. Title 2 of the United States Code has NEVER been enacted into law.
(A-36 to A-49, attached Appendix)

FACT 13. By never enacting Title 2 of the United States Code into law, the very authority for the existence of the United States Code is "inconsistent, redundant, archaic and obsolete" according to the Congress. ALL "laws" contained in the United States Code, including those titles that have been enacted into law, are tainted. This includes, but is not limited to:

Federal Rules of Civil Procedure;
Federal Rules of Appellate Procedure;
Title 28, U.S. Code.

FACT 14. Effective January 2, 1975, or as soon thereafter as Pub. L. 93-554 was incorporated into the United States Code, the very authority for THE ENTIRE UNITED STATES CODE became branded as

"inconsistent, redundant, archaic and obsolete" by Congress. (A-36 to A-49, attached Appendix).

FACT 15. With respect to the suggestion of the defendants that the "Anti-Injunction Act" as set forth in Title 26, U.S.C., §7421 bars this lawsuit, the suggestion is frivolous for the following reasons:

1. The Anti-Injunction Act referred to is a part of the original Internal Revnue Code of August 16, 1954, and has been since amended. The entire Internal Revenue Code of 1954 became "inconsistent, redundant, archaic and obsolete" in 1955, when said Code was included in Title 26 of the United States Code, which Congress had earlier branded and proclaimed to be "inconsistent, redundant, archaic and obsolete". (A-36 to A-51, attached Appendix)

2. The Anti-Injunction Act referred to has no application herein, because NO LAWFUL TAXES ARE INVOLVED.

3. Title 26 of the United States Code has not been enacted into law. (A-36 to A-51, attached Appendix)

FACT 16. In spite of the suggestions of the defendants "attorneys" to the contrary, there are no federal taxes involved in this lawsuit. There is, however, a clearcut attempt to extort money and property from the plaintiff by fraud and deceit, under color of (tax) law.

FACT 17. Before the defendants could hope to invoke the limitation imposed by the Anti-Injunction Act, 26 U.S.C., Section 7421, as a barrier to this lawsuit (assuming that 26 U.S.C. §7421 even exists), there must first be evidence and proof that:

a. Federal taxes are involved, and,
b. That the plaintiff owes said taxes.

The defendants have made no such showing, nor can they make such showing.
FACT 18. There is no statutory evidence that the Congress of the United States ever created the Internal Revenue Service.
FACT 19. The plaintiff holds a good faith belief that the Internal Revenue Service is not a lawful part of the United States Government. That good faith belief is based upon the Law as well as the facts, as follows:

a. The Internal Revenue Service has never submitted to an audit by the Government Accounting Office (GAO). All bona fide government agencies are auditied by the GAO.

b. The Internal Revenue Service has never submitted to an audit by any other agency of the United States Government, either.

c. The Internal Revenue Service has resisted each and every attempt made by the Congress to have the Internal Revenue Service audited.

d. Nobody actually knows for certain what the Internal Revenue Service does with the "taxes" it collects.

e. Neither Congress (Legislative branch), the Department of Justice (Executive branch), nor this Court (Judicial branch) can offer valid proof that the Internal Revenue Service turns even one cent over to the United States Government.

f. The I.R.S. is a private corporation, similar to the Federal Reserve (which is neither "federal" nor "reserve"). Neither corporation has ever been audited by the United States Government.

FACT 20. The "Brief for the Appellees" fails to state a claim upon which relief may be granted.
FACT 21. There is no evidence that the

plaintiff has willingly and knowingly entered into a contract with the private corporation known as the Internal Revenue Service.
FACT 22. The plaintiff has no contractual obligations to the defendants, and never has had any such contractual obligations.
FACT 23. The Constitution of the United States of America prohibits a direct tax upon citizens, unless apportioned.
FACT 24. The 16th Amendment to said Constitution did not authorize any new form of tax, nor did it alter or abolish the requirement that direct taxes must be apportioned.
FACT 25. The 16th Amendment was intended to be the enabling legislation for the Corporate Excise Tax of 1909. The plaintiff is not a corporation, so neither said Corporate Excise Tax, nor the 16th Amendment apply to the plaintiff.
FACT 26. Neither the 16th Amendment nor the 17th Amendment were lawfully ratified, for a number of reasons. One of the reasons for the unlawfulness of said ratification was that OHIO was not a State of the Union before 1953. Ohio may still be a Territory.
FACT 27. The Internal Revenue Code of 1954 became "inconsistent, redundant, archaic and obsolete" early in 1955, at the time it was inserted into Title 26, U.S.C. Congress has repeatedly proclaimed 26 U.S.C. to be "inconsistent, redundant, archaic and obsolete" each year starting with 1946 (See preface page to U.S. Code).
FACT 28. The amendments to the Internal Revenue Code become "inconsistent, redundant, archaic and obsolete" the first part of the year following enactment of said amendments. At that time, said amendments were added into Title 26, U.S.C., and become tainted and branded as "inconsistent, redundant, archaic and obsolete".

FACT 29. The will and intent of the Congress that the Internal Revenue Code and Title 26, U.S.C. be "inconsistent, redundant, archaic and obsolete" is clear. The reasons for Congress to make that determination and proclamation may not be so clear. However, it is not the duty and function of this Court to interpret the motives behind the clear will and intent of the Congress. The duty of this Court is to SUPPORT the Constitution of the United States of America and the clear will and intent of the legislative branch. The clear will and intent of the Legislature is not subject to judicial (mis)interpretation.

FACT 30. The will and intent of the Congress that Title 26, U.S.C., and the Internal Revenue Title contained therein, IS NOT LAW ENACTED BY CONGRESS is clear. The reasons for Congress to make that determination and proclamation may not be so clear. However, it is not the duty and function of this Court to interpret the motives behind the clear will and intent of the Congress. The duty of this Court is to SUPPORT the Constitution of the United States of America and the clear will and intent of the legislative branch. The clear will and intent of the Legislature is not subject to judicial (mis)interpretation.

FACT 31. "Civil action. Action brought to enforce, redress, or protect <u>private rights</u>." Black's Law Dictionary, 5th Ed. (emphasis added).

FACT 32. The interjection of the United States of America into this lawsuit is a lawless self-serving act. The real plan and purpose of said interjection, is to contine the fraud of the "income tax" upon the plaintiff and the American people.

FACT 33. Page 3 of the Brief of the Appellees contains the following gem:

"STATEMENT OF STANDARD OR SCOPE OF REVIEW

The issue whether the District Court correctly dismissed this action is a question of law subject to de novo review."

There cannot be any de novo review, until such time as there has been a primary review.

FACT 34. There has not been any review, hearing or trial of this lawsuit in the lower court.

CONCLUSIONS

There is no basis in law for the United States of America to be interjected into this Civil action, because the United States of America does not have any "private rights" to protect.

The attempt by agents of the Executive Department to interject the United States of America into this lawsuit is a lawless act, and cannot lawfully be tolerated or encouraged by this Court.

There is no basis in law or fact for the "appearance" of GLENN L. ARCHER, JR.; MICHAEL L. PAUP; WILLIAM S. ESTABROOK; THOMAS A. GICK; EDWARD S.G. DENNIS, JR.; or any other employee of the United States Department of Justice, as attorney for the defendants.

PLAINTIFF'S-APPELLANT'S DEMANDS

In light of the foregoing, the plaintiff-appellant claims and demands that:

1. The appearance of GLENN L. ARCHER, JR.; MICHAEL L. PAUP; WILLIAM S. ESTABROOK; THOMAS A. GICK; EDWARD S.G. DENNIS, JR.; and the United States Department of Justice, as attorney for the defendants, be striken forthwith as frivolous, specious, and an attempt to obstruct the administration of justice.

2. The plaintiff-appellant further claims and demands that the Brief for the Appellees, and any other papers submitted by GLENN L. ARCHER, JR.; MICHAEL L. PAUP;

WILLIAM S. ESTABROOK; THOMAS A. GICK; EDWARD S.G. DENNIS, JR.; and the United States Department of Justice, be striken and expunged from this At Law proceeding forthwith.

3. The order herein appealed must be reversed and remanded to the lower court for trial by jury.

4. That this Court censure U.S.D.J. EDWARD N. CAHN for his callous disregard for the law, and for the rights of the appellant.

5. Only a competent jury can settle this case, and that a jury trial must be scheduled without denial, sale (cost), or delay.

Dated: February 15, 1985"

On March 27, 1985, the circuit court issued a memorandum opinion and judgment, which was rebutted by the appellant, as follows:

"CLAIM FOR REHEARING EN BANC, ON THE MERITS

The appellant is in receipt of a memorandum opinion and judgment of this Court entered March 27, 1985, in the above-captioned civil action.

The court erred in its opinion in that it cited 26 U.S.C. §7421(a)(1982); Enochs v. Williams Packing Co., 370 U.S. 1 (1962).

Obviously, neither the lower court nor this Court considered the fact that Title 26 of the United States Code is not now, and never has been LAW.

This Court, in its memorandum order and judgment, has not addressed the issues on the merits, and the merits are substantial,

as are the issues.

The appellant entered a legitimate challenge to the validity of the Internal Revenue Code and of Title 26 of the United States Code.

If the basis for a statute, long in existence, may be found to be fraudulent, or if, in its passage through the legislative process, a fraud was perpetrated, what is the validity of a claim that, because the statute has been relied upon for many years, it must stand in spite of the fraud?

In order to answer this question it is necessary to understand that "stare decisis is not, like the rule of res judicata, a universal, inexorable command," and that it "is not inflexible." Justice Brandeis, dissenting, in Burnet v. Coronado Oil & Gas Co., 285 U.S. 393 (1932), 405, 406. In 1938, Burnet, supra, was overruled by Helvering v. Mountain Producers Corp., 303 U.S. 376 and Justice Brandeis dissent was vindicated. This is the liberal principle set forth by Justice Holmes, dissenting, in B.& W. Taxi Co. v. B.& Y. Taxi Co., 276 U.S. 518 (1927), 533 -

> "...in my opinion the prevailing doctrine has been accepted upon a subtle fallacy that never has been analyzed.
>
> If I am right the fallacy has resulted in an unconstitutional assumption of powers by the Courts of the United States which no lapse of time or respectable array of opinion should make us hesitate to correct."

Justice Holmes' principle of review requires reversal, no matter how much time may have passed or how many previous decisions may have been made, if the foundation for a statute or judicial decision is illusionary. The principle was used to reverse a one-hundred-year-old

decision in Erie R.R. v. Tompkins, 304 U.S. 64 (overruling Swift v. Tyson, 16 Pet. 1).

In Smith v. Allwright, 321 U.S. 649, (1943), 665, Justice Holmes' principle is followed -

> "...when convinced of former error, this Court has never felt constrained to follow precedent. In Constitutional questions, where correction depends upon amendment and not upon legislative action this Court throughout its history has freely exercised its power to reexamine the basis of its constitutional decisions. This has long been accepted practice, and this practice has continued to this day. This is particularly true when the decision believed erroneous is the application of a constitutional principle rather than an interpretation of the Constitution to extract the principle itself."

Obviously, had there been a fraud in the passage of a statute, even more so in the ratification of a constitutional amendment, there could be nothing to apply and , thus, any previous application of the constitutional principles accruing from such a constitutional amendment must fall, and they must fall no matter how much time had passed or how many applications had been made. Any decision of a court cannot be given stature, even under stare decisis, if, in the determination of a fact, the court has made an error. Burnet, supra, 412. A very grave error in the determination of the existence of the ratification of the Sixteenth Amendment has been made and has continued to be made to this very day.

The 16th Amendment is the basis for the "income tax laws". Said amendment was never ratified, and confers no authority whatsoever. The Internal Revenue Code of 1954

a/k/a Title 26 of the United States Code is allegedly based upon the fraudulent 16th Amendment.

Aside from that substantial fact, the very codes are in conflict. That conflict was raised in the lower court, and has not been addressed by the lower court or this Court.

In order to more fully understand the position of the appellant herein, a short chronology of the United States Code is necessary to include here. This Court is cautioned to use only the United States Code as officially published by the United States Printing Office. West's U.S.C.A. is not error free.

THE UNITED STATES CODE

(A) The United States Code originated as "The Code Of The Laws Of The United States Of America, 1925 Edition" on June 30, 1926 [Public No. 440] Chapter 712. The will and intent of the Congress was to "establish prima facie the laws of the United States, general and permanent in their nature."

(B) The Congress changed the plan and purpose of the Code (July 30, 1947, ch. 388, 61 Stat. 638) so that it might provide: "That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained." Title 1, U.S.C., § 204(a).

(C) At the end of § 204 of Title 1, U.S.C., there is the following statement:

"Title 26, Internal Revenue Code

The Internal Revenue Code of 1954 was enacted in the form of a separate code by act August 16, 1954, ch. 736, 68A Stat. 1. The sections of Title 26, United States Code, are identical to the sections of the Internal Revenue Code." (emphasis added)

(D) Title 26, U.S.C. has never been

enacted into law by the Congress of the United States. See preface pages to U.S. Codes.

(E) Congress has plainly stated the reasons for never enacting Title 26 of the United States Code into law, namely, that said Title 26 is "inconsistent, redundant, archaic, and obsolete". See preface page to various editions of the United States Code.

(F) More recently, Congress changed the reason slightly by omitting the word "archaic", while retaining the "inconsistent, redundant, and obsolete".

(G) Since "The sections of Title 26, United States Code, are identical to the sections of the Internal Revenue Code"), it follows that because Title 26, United States Code is "inconsistent, redundant, and obsolete", so too is the Internal Revenue Code of 1954. If it were not, then the two (2) would not be IDENTICAL.

(H) The will and intent of the Congress is the law. In this instant the Congress:

(1) Created the Code of Laws of the United States (1926) as prima facie evidence.

(2) Proclaimed ALL 50 titles of the United States Code (1946) to be "inconsistent, redundant, archaic, and obsolete".

(3) Included in that proclamation is the fact that the Internal Revenue Code of 1939, as contained in Title 26, U.S.C., is "inconsistent, redundant, archaic, and obsolete" as of 1946.

(4) Began a project designed to change the Code from prima facie evidence to legal evidence (1946), which required each title of said Code to be revised and enacted into law.

(5) Enacted the Internal Revenue Code of 1954.

(6) Inserted the Internal Revenue Code

of 1954 into Title 26 of the United States Code, (early in 1955), at which time said Internal Revenue Code of 1954 was stamped by the Congress as "inconsistent, redundant, archaic, and obsolete."

(7) Has proclaimed that the Internal Revenue Code of 1954 a/k/a Title 26 of the United States Code is "inconsistent, redundant, archaic, and obsolete" on the preface page of the United States Code each year from 1956 to date.

(8) Made any and all amendments to said Internal Revenue Code of 1954 "inconsistent, redundant, archaic, and obsolete" less than one year after their enactments, when they became incorporated in Title 26 of the U.S. Code.

(9) Made their will and intent clear and consistent for at least the past 30 years. On a yearly basis, the Congress warned all citizens to be wary because the Internal Revenue Code of 1954 was, and is, "inconsistent, redundant, archaic, and obsolete".

(10) Stated clearly that the Internal Revenue Code of 1954, as amended and set forth in Title 26 of the United States Code, IS NOT LAW. It will never be law until Congress decides to make it law.

(I) Article I, Section 1 of the Constitution of the United States mandates that:

> "ALL legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."
> (emphasis added)

The Constitution is clear and not subject to misinterpretation. The word "ALL" is comprehensive. If the Congress did not make a "law" then there is no law. There are no exceptions possible.

(J) The Congress did not enact Title

26, U.S.C. into law. Therefore, Title 26, U.S.C. is NOT LAW.

(K) In 1955, or thereabouts, the Congress trashed and/or repealed the Internal Revenue Code of 1954, by incorporating it in Title 26, U.S. Code as NOT LAW.

(L) Sections 6321, 6322 and 6323 of the Internal Revenue Code, which is the "authority" used to attempt to steal the private property of the appellant, were part of the original enactment of August 16, 1954. Said Sections 6321, 6322, and 6323 became unenforceable by proclamation of Congress, on or about the first quarter of 1955, when said sections became a part of "inconsistent, redundant, archaic, and obsolete" Title 26, U.S.C. Their Non-Law status has not changed in the past 30 years. They remain NOT-LAW.

(M) The 16th Article of Amendment to the Constitution of the United States of America created no new form of taxation, assuming arguendo the existence of the 16th. We have the word of the Congress and the Supreme Court attesting to this fact.

(N) The Constitution of the United States of America, at Article I, Section 9, prohibits Congress from enacting a direct tax, except in Proportion to the Census or Enumeration (apportionment).

(O) The Internal Revenue Service did levy a direct tax upon the private property of the appellant, without apportionment, and in violation of Art. I, Sec. 9, U.S. Constitution. This violation of the unalienable and Constitutionally guaranteed and protected property rights of the appellant is the subject of this lawsuit.

Is this case in any way related to "taxes"? If so, where is that relationship by law?

If the annual proclamation of Congress, for at least the past 30 years is to be believed, then the "Internal Revenue Code" as amended; "The Internal Revenue Title" as amended; the "Internal Revenue Code of 1939" as amended; the "Internal Revenue Code of 1954" as amended; and "Title 26 of the United States Code", all being IDENTICAL, are ALL "inconsistent, redundant, archaic, and obsolete". Not only are they unenforceable for that reason, but, Congress having set the requirement that they be incorporated into Title 26, U.S.C., has proclaimed, on an annual basis for the past 30 years, that Title 26, U.S.C. has not been enacted into law.

Since ALL Law must be made by Congress pursuant to Article I, Sec. 1, of the Constitution of the United States, it factually follows that Congress has proclaimed Title 26, U.S.C. to be unconstitutional on its face [Congress has not enacted it into law].

From the foregoing, it is a fact that there are no valid "tax" laws involved in this lawsuit, nor has the Internal Revenue Service any lawful power or authority under any "internal revenue statutes".

The undersigned recognizes that this is a difficult idea for professionals at the law to accept. This idea is even harder for them to accept than it is for the undersigned, because they have been trained to enforce said "income tax laws", and have been doing so for a long time. However, the fact that they have been misled, and so has everyone else, doesn't change the facts, and one of the facts is that this is not "another tax-related litigation". NO TAXES ARE INVOLVED.

THE UNITED STATES CODE AS LEGAL EVIDENCE

As already set forth above, the plan and purpose of the United States Code was

changed (July 30, 1947, ch. 388, 61 Stat. 638) in 1947, so that it might provide:

> "That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained." Title 1, U.S.C., §204(a).

Congress, in its infinite wisdom, by its 1947 enactment, has established two forms of legal evidence within the United States Code as follows:

(1) In the case of those titles of the Code that have been enacted into positive law, the text of said title is legal evidence, as per 1 U.S.C. § 204(a).

(2) In the case of those titles of the Code that have not been enacted into positive law, i.e. Titles 2, 6, 7, 8, 12, 15, 16, 19, 20, 21, 22, 24, 25, 26, 27, 29, 30, 33, 36, 40, 41, 42, 43, 45, 46, 47, 48, and 50, the Code offers legal evidence that said text is "inconsistent, redundant, archaic, and obsolete", as per the preface page to the yearly edition/supplement of said Code.

In the case of Title 26, U.S.C., the text of the Internal Revenue Code of 1954, as amended, and the text of Title 26, U.S.C. are IDENTICAL, as per the notes at the end of 1 U.S.C. § 204.

Title 26, U.S.C. has not been enacted into positive law by Congress, according to Congress. Since it does not conform to the Constitutional mandate set forth in Art. I. Sec 1. U.S. Constitution, it logically follows that said Title 26 of the United States Code is unconstitutional on its face.

The Internal Revenue Code of 1954 may have been valid law in 1954, when it was enacted as Public Law. However, it was repealed, trashed, and discarded by the Congress in 1955, when it was incorporated

into Title 26, U.S.C. Since 1955, the United States Code offers legal evidence that the Internal Revenue Code of 1939, and the Internal Revenue Code of 1954, as amended and incorporated into Title 26, U.S.C., are UNCONSTITUTIONAL, INCONSISTENT, REDUNDANT, ARCHAIC, AND OBSOLETE. A more positive statement of the NON-LAW status of the Internal Revenue Code/ 26 U.S.C. is unnecessary, since legal evidence has been furnished by the Congress itself, for the past 30 years.

FRIVOLOUS.

In light of the foregoing legal evidence that the United States is not a party to this action; that the "internal revenue" laws are unconstitutional; that no taxes are involved herein; that agents of the United States have unlawfully interposed themselves in a private matter; that the plaintiff had no dealings with the Internal Revenue Service; that the Internal Revenue Service has attempted extortion under color of law; that the Internal Revenue Code is not law; that Title 26 of the U.S. Code is not law, among other things, it would appear that the dismissal is frivolous. Further, it would appear that the memorandum order and judgment is frivolous, since the true respondents have not made that motion.

FEDERAL RULES OF CIVIL PROCEDURE.

The "government", in its unlawful appearance herein, attempted to cite the Federal Rules of Civil Procedure, and, of course, the courts rely heavily upon said rules. At page 515 of Title 28, U.S.C. under the caption "Rules Of Civil Procedure For The United States District Courts (As amended to January 12, 1983)" the following appears:

"AUTHORITY"

"The Rules of Civil Procedure

hereinafter set out were promulgated by the Supreme Court of the United States under authority of former sections 723b, 723c (now § 2072) of this title."

The undersigned recognizes that attorneys and judges are required to use and follow said rules. The undersigned, not being a lawyer, recognizes that he is not bound by said rules because he is not a lawyer or judge. In addition, the authority for said rules contains a disclaimer which is normally overlooked by the legal profession, namely:

> "Such rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as at common law and as declared by the Seventh Amendment to the Constitution." Title 28, U.S.C., §2072. (emphasis added)

In light of Section 2072 of Title 28, U.S.C., the appellant was, and is, correct in his reliance upon the Constitution of the United States of America. There is nothing granted or implied in said rules that could circumvent or destroy said Constitutional rights. The judges did not swear to support said rules, but, they did swear to support the Constitution of the United States as a condition of their employment.

The attention of this Court is directed to the fact that the summary dismissal of the appellant's lawsuit by the lower court, as well as the affirmation of that summary dismissal, has the effect of invalidating numerous Acts of Congress.

The undersigned appellant fully expects this Court to honor its oath, as well as to obey the Law. No objections having been entered by any of the named appellees, justice demands reversal and remanding to the lower court for

appropriate action.
April 9, 1985"

At no time has there been a hearing on the merits of this case in the lower courts. The district court stonewalled the complaint AT LAW, which is an unlawful act. The circuit court aided and abetted the lawlessness of the district court by rubber-stamping the unlawful dismissal by the district court.

One of the requirements of AT LAW civil lawsuits is Trial By Jury. No jury trial was held, which is a denial of due process of law.

While some lawyer-judge might consider something "frivolous", there is no reason to believe that a jury would make that same determination, which is why a jury trial (with a jury competent to determine the law as well as the facts) is a hallmark of AT LAW civil actions.

At the circuit court level, no oral

arguments were heard, another denial of due process of law.

ACTS OF CONGRESS INVALIDATED

The acts and actions herein complained of, as affirmed by the circuit court, had the effect of invalidating the following Acts of Congress:

Art. I, Sec. 8, Cl. 1, U.S. Constitution

Art. I, Sec. 9, U.S. Constitution

Art. III, Sec. 1, U.S. Constitution

Amendment I, U.S. Constitution

Amendment IV, U.S. Constitution

Amendment V, U.S. Constitution

Amendment VII, U.S. Constitution

Amendment IX, U.S. Constitution

Amendment X, U.S. Constitution

REASONS WHY QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION, WITH BRIEFS ON THE MERITS AND ORAL ARGUMENT, FOR THEIR RESOLUTION.

(1) The United States Code has been so fouled up by the lawyers in the Congress, that the Judiciary is without any valid statute law to adjudicate, rendering the courts lawless, and therefore, useless.

(2) The conflicting statutes contained within the United States Code make it impossible for the courts to render just and righteous decisions. Unless the courts are capable of rendering just and righteous decisions, the purpose of the courts no longer exists. Their effectiveness has ended. There is, therefore, no further need for the courts.

(3) The inability of the lower courts to address the issues, as evidenced by the way the lower courts handled this case, is clear evidence of the fact that the lower courts cannot render just and righteous decisions any longer. This is not their fault entirely. The foul-up of the United

States_Code, which has not been caused by the courts themselves, has left the courts in the awkward position of having to invent "law" to cover-up this foul-up.

(4) The Internal Revenue Service, unlawfully hiding under the umbrella of the Unuted States of America, has been stealing the American people blind, under color of law.

(5) The Executive and Judicial departments of the United States of America have been, and continue to, aid and abet the theft of property under color of law, by "enforcing" the United_States_Code as if it were Law.

(6) The problems caused by the foul-up of the United_States_Code have resulted in a complete breakdown of the law and order in the United States of America. Terrorism is the keyword in today's society. The criminal justice system (State and Federal)

is in a shambles.

(7) The problems created by the foul-up of the United States Code will not go away.

CONCLUSION

This Court has the Constitutional authority to act on behalf of the appellant, in order to protect his unalienable rights. The appellant claims and demands that this Court act immediately upon this direct appeal.

The issues raised are of major import; have never been addressed before; are within the appellate jurisdiction of this Court; and must be addressed by this Court.

Failure to address these Constitutional issues will result in irreparable harm and damage to our Constitutional Republic; to the Constitutional laws which govern our Nation; and to the unalienable rights of

the appellant.

Dated: May 20, 1985

Jude Thibault

JUDE THIBAULT
Appellant
P.O. Box 133
Stevens, PA 17578

CERTIFICATE OF SERVICE

The appellant certifies that he has served the above jurisdictional statement upon the Solicitor General of the United States, Department of Justice, Washington, D.C., 20543, by mailing a copy thereof in a properly addressed envelope, with postage prepaid.

Jude Thibault

JUDE THIBAULT

APPENDIX

Not_For_Publication

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 84-1658

JUDE THIBAULT,
Appellant

v.

CARL H. WEISS, A. DiSANTO,
G. CRAGIN, CHARLES E. RODDY
and INTERNAL REVENUE SERVICE

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA

(D.C. Civil No. 84-4534)
District Judge: Hon. Edward N. Cahn

Submitted Under Third Circuit Rule 12(6)
March 20, 1985
Before: GIBBONS, SLOVITER and VAN DUSEN,
Circuit_Judges
(Opinion Filed: March 27, 1985)

MEMORANDUM OPINION OF THE COURT

GIBBONS, Circuit_Judge: /s/

Jude Thibault appeals from an order of the United States District Court dismissing as frivolous his action against the Internal Revenue Service and several

employees of that service seeking to restrain the collection of a deficiency assessment of income tax. The trial court did not err in dismissing the action. 26 U.S.C. §7421(a) (1982); 28 U.S.C. §2201 (1982); Enochs v. Williams Packing Co., 370 U.S. 1 (1962). The order appealed from will, therefore, be affirmed..

TO THE CLERK OF THE COURT:

Kindly file the foregoiong Memorandum Opinion.

/s/ John J. Gibbons
Circuit Judge

UNITED STATES COURT OF APPEAL
FOR THE THIRD CIRCUIT

No. 84-1658

JUDE THIBAULT,
Appellant

v.

CARL H. WEISS, A. DiSANTO,
G. CRAGIN, CHARLES E. RODDY
and INTERNAL REVENUE SERVICE

SUR PETITION FOR REHEARING

Present: ALDISERT, Chief Judge, SEITZ, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGENBOTHAM, SLOVITER, and BECKER, Circuit Judges and VAN DUSEN, Senior Circuit Judge

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not

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*Hon. Francis L. Van Dusen, Senior United States Circuit Judge, on panel rehearing only.

having voted for rehearing by the court en banc, the petition for rehearing is denied.

By the Court,

/s/ John J. Gibbons
Judge

Dated: April 25, 1985